

§ 1.856-0

\$65,000 declared on March 5, 1955. The election under section 855(a) is valid only to the extent of \$15,000, the amount of the undistributed earnings and profits for 1954 (\$100,000 earnings and profits less \$85,000 distributed during 1954). The remainder (\$50,000) of the \$65,000 dividend paid on March 31, 1955, could not be the subject of an election, and such amount will be regarded as a distribution by the Y Company out of earnings and profits for the taxable year 1955. Assuming that the only other distribution by the Y Company during 1955 was a distribution of \$75,000 paid as a dividend on October 31, 1955, the total amount of the distribution of \$65,000 paid on March 31, 1955, is to be treated by the shareholders as taxable dividends for the taxable year in which such dividend is received. The Y Company will treat the amount of \$15,000 as a distribution of the earnings or profits of the company for the taxable year 1954, and the remaining \$50,000 as a distribution of the earnings or profits for the year 1955. The distribution of \$75,000 on October 31, 1955, is, of course, a taxable dividend out of the earnings and profits for the year 1955.

(e) *Notice to shareholders.* Section 855(c) provides that in the case of dividends, with respect to which a regulated investment company has made an election under section 855(a), any notice to shareholders required under subchapter M, chapter 1 of the Code, with respect to such amounts, shall be made not later than 45 days (30 days for a taxable year ending before February 26, 1964) after the close of the taxable year in which the distribution is made. Thus, the notice requirements of section 852(b)(3)(C) and paragraph (c) of § 1.852-4 with respect to capital gain dividends, section 853(c) and § 1.853-3 with respect to allowance to shareholder of foreign tax credit, and section 854(b)(2) and § 1.854-2 with respect to the amount of a distribution which may be treated as a dividend, may be satisfied with respect to amounts to which section 855(a) and this section apply if the notice relating to such amounts is mailed to the shareholders not later than 45 days (30 days for a taxable year ending before February 26, 1964) after the close of the taxable year in which the distribution is made. If the notice under section 855(c) relates to an election with respect to any capital gain dividends, such capital gain dividends shall be aggregated by the investment company with the designated capital gain dividends actually paid during the taxable year to which the

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election applies (not including such dividends with respect to which an election has been made for a prior year under section 855) for the purpose of determining whether the aggregate of the designated capital gain dividends with respect to such taxable year of the company is greater than the excess of the net long-term capital gain over the net short-term capital loss of the company. See section 852(b)(3)(C) and paragraph (c) of § 1.852-4.

(f) *Foreign tax election.* Section 855(d) provides that in the case of an election made under section 853 (relating to foreign taxes), the shareholder of the investment company shall consider the foreign income received, and the foreign tax paid, as received and paid, respectively, in the shareholder's taxable year in which distribution is made.

[T.D. 6500, 25 FR 11910, Nov. 26, 1960, as amended by T.D. 6921, 32 FR 8757, June 20, 1967]

REAL ESTATE INVESTMENT TRUSTS

§ 1.856-0 Revenue Act of 1978 amendments not included.

The regulations under part II of subchapter M of the Code do not reflect the amendments made by the Revenue Act of 1978, other than the changes made by section 362 of the Act, relating to deficiency dividends.

(Sec. 856(d)(4) (90 Stat. 1750; 26 U.S.C. 856(d)(4)); sec. 856(e)(5) (88 Stat. 2113; 26 U.S.C. 856(e)(5)); sec. 856(f)(2) (90 Stat. 1751; 26 U.S.C. 856(f)(2)); sec. 856(g)(2) (90 Stat. 1753; 26 U.S.C. 856(g)(2)); sec. 858(a) (74 Stat. 1008; 26 U.S.C. 858(a)); sec. 859(c) (90 Stat. 1743; 26 U.S.C. 859(c)); sec. 859(e) (90 Stat. 1744; 26 U.S.C. 859(e)); sec. 6001 (68A Stat. 731; 26 U.S.C. 6001); sec. 6011 (68A Stat. 732; 26 U.S.C. 6011); sec. 6071 (68A Stat. 749, 26 U.S.C. 6071); sec. 6091 (68A Stat. 752; 26 U.S.C. 6091); sec. 7805 (68A Stat. 917; 26 U.S.C. 7805), Internal Revenue Code of 1954; 860(e) (92 Stat. 2849, 26 U.S.C. 860(e)); sec. 860(g) (92 Stat. 2850, 26 U.S.C. 860(g)))

[T.D. 7767, 46 FR 11265, Feb. 6, 1981, as amended by T.D. 7936, 49 FR 2106, Jan. 18, 1984]

§ 1.856-1 Definition of real estate investment trust.

(a) *In general.* The term "real estate investment trust" means a corporation, trust, or association which (1) meets the status conditions in section 856(a) and paragraph (b) of this section,